

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LANDWORKS CREATIONS, LLC

Plaintiff,

V.

**UNITED STATES FIDELITY &
GUARANTY COMPANY**

Defendant,

C.A. No. 4:05-CV-40072-FDS

UNITED STATES FIDELITY AND GUARANTY COMPANY’S
MOTION TO SEVER AND STAY

United States Fidelity and Guaranty Company (“USF&G”) hereby moves the Court to sever and stay Landworks Creations, LLC’s (“Landworks”) claim of violations of Mass. G.L. ch. 93A and 176D for unfair claims settlement practices, contained in Count II of the Verified Complaint, until such time as Landworks’ underlying breach of contract claim is resolved. In a separate pleading filed herewith, USF&G also opposed Landworks’ petition to take in excess of ten depositions.

USF&G agrees with Landworks’ assessment that this litigation involves two distinct portions – Landworks’ breach of contract claim and USF&G’s breach of contract and negligence claims on one hand, and Landworks’ Mass. Gen. L. ch. 93A/176D claim on the other. In opposition to Landworks’ request to dramatically expand the scope of this litigation, USF&G seeks to sever and stay Landworks’ Mass. Gen. L. ch. 93A/176D claim. Plaintiff cannot maintain such claims unless it succeeds with its underlying breach of contract claim. Only after

such a finding can the Court determine the reasonableness of USF&G's claims settlement practices regarding Landworks.

As indicated in its petition to take in excess of ten depositions, Landworks intends to take depositions of some **29 witnesses** in this matter, including USF&G's current and former counsel in this litigation: Kevin O'Connor, Esq. of Hermes, Netburn, O'Connor & Spearing, P.C. and Brad Carver, Esq. of Hinshaw & Culbertson. Landworks also intends to depose Scott Spearing, Esq. of Hermes, Netburn, O'Connor & Spearing, P.C., who has represented USF&G in other payment bond cases involving the Shrewsbury Middle School construction project, as well as other projects.

To further the interests of judicial efficiency and economy, as well as to protect USF&G's rights under evidentiary privileges, the Court should Sever and Stay Landworks' claim for violation of Mass. G.L. ch. 93A and 176D.

As further grounds for this Motion, USF&G relies upon the Memorandum of Law in Support of USF&G's Motion to Sever and Stay, Affidavit of Eric C. Hipp, USF&G's Opposition to Plaintiff's Petition for Leave to Conduct in Excess of 10 Depositions, and Memorandum of Law in Support of USF&G's Opposition to Plaintiff's Petition for Leave to Conduct in Excess of 10 Depositions, all of which are filed herewith.

WHEREFORE, USF&G requests that the Court sever and stay Landworks' claim of violations of Mass. G.L. ch. 93A and 176D for unfair claims settlement practices, contained in Count II of the Verified Complaint, until such time as Landworks' underlying breach of contract claim is resolved.

Respectfully submitted,

**UNITED STATES FIDELITY &
GUARANTY COMPANY**

/s/ Eric C. Hipp

Kevin J. O'Connor, BBO No. 555249

Eric. C. Hipp, BBO No. 642658

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Dated: June 16, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants (none) on June 16, 2006.

/s/ Eric C. Hipp

Eric C. Hipp